IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.11413 OF 2001

Tmt.K. Nagarani .. Petitioner

-Vs-

1. Director of School Education,
Chennai 6.

2. District Educational Officer,
(North), Chennai 8.

3. Secretary & Correspondent,
P.T.Lee Chengalvaraya Naicker
High School, Choolai,
Chennai 112. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.R. Selvaraju

For Respondents 1-2 : Mrs. Thenmozhi Shivaperumal
A.G.P.,
Respondent-3 : Mr.J.R.K. Bhavanantham

Respondent-4 : Mr.K. Sridhar

:J U D G M E N T

The case of the petitioner is as follows :
She was appointed as B.T. Assistant on a consolidated pay of Rs.1400 /- under the third respondent school in October, 1995. She was being allowed to continue till the end of April of every academic year and would be re-appointed in the month of June. While the matter stood thus, the Government sanctioned one B.T. Assistant post to the school on 13.5.1997. The Management called for list of candidates from the employment exchange. The name of the petitioner was also sponsored along with other candidates. On the basis of an interview, the petitioner was selected on 26.10.1998 and

papers were forwarded to the second respondent for approval. Such papers were however returned by the second respondent on the ground that management had not made appointment within three months from the date of sanction of the post. Subsequently,the management requested the second respondent to reconsider the matter and grant approval in respect of appointment of the petitioner. However, the second respondent had not given any approval. At that time, the petitioner filed W.P.No.6243 of 2001 seeking writ of mandamus directing the second respondent to approve the appointment. Such writ petition was disposed of with the direction to dispose of the proposal submitted by the third respondent management, if the same was represented and had not been disposed of on merits. Subsequently, however, the petitioner came to learn that the second respondent passed an order to the effect that the proposal has not been represented. It has been stated by the petitioner that since she has been working from 1995, the Management could have appointed her under Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Act. However, without doing so, the Management had called for list of candidates and the petitioner was duly selected. On the basis of these averments, the petitioner has prayed for :

 . . . issue a Writ of Mandamus directing the 3rd respondent management to submit copy of the proposal dated 26-10-1998 to the 2nd respondent so as to enable the 2nd respondent to approve the appointment of the petitioner as B.T. Assistant (Science) and direct the 2nd respondent to approve the appointment of the petitioner and confer all the consequential benefits . . .

3. A counter affidavit has been filed in the connected WPMP, wherein it is indicated that third respondent school is a Government aided school. The Government had sanctioned one post of Headmaster and one post of B.T. Assistant in May, 1997. It has been stated in the counter that selection of the petitioner had been made without following the procedure contemplated under Rule 15 and when proposal was forwarded, it was pointed out by the educational authority that the school had to follow such procedure. It has been further indicated that though the proposal had not been re-submitted by the management, the petitioner has made erroneous averments to that effect and on that basis, the High Court had given a direction for consideration of the proposal. It has been however clarified that no such papers had been resubmitted at all.

4. One of the existing secondary grade teachers, on her own application, has been impleaded as Respondent No.4 and in her counter she has stated that repeated representation had been made by her to consider her case for promotion.

5. Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Act, which is admittedly applicable is to the following effect :-

RULE 15. Qualifications, conditions of service of teachers and other persons:-

. . . (4) (i) Promotions shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(ii) Appointments to the various categories of teachers shall be made

in the following methods:
(i) promotion from among the qualified teachers in that school;
(ii) if no qualified and suitable candidate is available by method (i) as above -
(a) appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers;
(b) appointment of teachers from any other school;
(c) direct recruitment
. . .

6. A bare perusal of the aforesaid rule makes it clear that appointment has to be made in the manner indicated in such rule. The rule contemplates that as a matter of priority the post is to be filled up by promotion from among the qualified teachers in that school and if no qualified and suitable candidate is available, on the basis of promotion of other persons employed in such school may be employed, provided such persons are fully qualified. If appointment cannot be made by the aforesaid method, appointment of teachers may be made from other schools and the last option is to make appointment by direct recruitment.

7. It is not disputed that the persons like respondent No.4 and other secondary grade teachers were available. It is nobody's case that the management had considered their case for promotion and found them unsuitable, in which event the next option would have been to appoint other persons employed in the said school, provided they are fully qualified.

8. Learned counsel for the petitioner has submitted that since the petitioner has already been employed as a teacher and the question was relating to appointment against an aided and sanctioned post, it must be taken that she had been promoted. However, the fact remains that in the present case, admittedly the selection was not on the basis of so called promotion from among the qualified teachers but was on the basis of interview of candidates sponsored by employment exchange. In other words, the procedure relating to direct recruitment had been followed. In view of the above, it cannot be said that the second respondent had committed an illegality in not according approval.

9. For the aforesaid reasons, the writ petition is liable to be dismissed. It goes without saying that the third respondent school shall take steps to fill up the post in accordance with the provisions contained in Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Act and if the petitioner is eligible, her candidature may also be considered. No costs.

Index : Yes
Internet : Yes

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To

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